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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-1159 and 76-1416

ARTHUR F. QUERN, Director of the Illinois Department of Public Aid, et al.,

Petitioners,

vs.

VENUS MANDLEY, et al.,

Respondents.

JOSEPH A. CALIFANO, JR., Secretary of the United States Department of Health Education and Welfare,

Petitioner,

vs.

VENUS MANDLEY, et al.,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE STATE PETITIONERS

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OPINIONS BELOW

The opinion of the court of appeals rendered November 23, 1976 (A. 119) is reported at 545 F. 2d 1062. The order of the district court entered November 29, 1976, at the express direction of the court of appeals (A. 142) is not reported. The opinion of the court of appeals rendered September 25, 1975 (A. 30) is reported at 523 F. 2d 415.

JURISDICTION

On February 13, 1977, state petitioners Arthur F. Quern, Director of the Illinois Department of Public Aid, and the Illinois Department of Public Aid, filed their petition for a writ of certiorari. The jurisdiction of the Supreme Court of the United States to review this cause is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

(See Supplement)

U.S. Const., Art. III, § 2;
U.S. Const., Amend. XIV, § 1;
42 U.S.C. § 601;
42 U.S.C. § 602(a)(10);
42 U.S.C. § 603(a)(1);
42 U.S.C. § 603(a)(5);
42 U.S.C. § 606(b);
42 U.S.C. § 606(e);
42 U.S.C. § 1302;
42 U.S.C. § 1318;
42 U.S.C. § 1396d;
45 C.F.R. § 233.20(a)(2)(v), (1976);
45 C.F.R. § 233.120(a), (1976);
33 Fed. Reg. 10229 (1968);
34 Fed. Reg. 393 (1969).

QUESTIONS PRESENTED

1. Whether the court of appeals erred by reversing the decision of the district court entered July 12, 1976, which dismissed the case as moot?

2. Whether the court of appeals erred by ruling that states electing to maintain an emergency assistance program under 42 U.S.C. § 606(e) must provide relief from all types of destitution and for all needy families with children?

3. Whether the order entered by the district court at the express direction of the court of appeals imposes burdens on the State of Illinois not intended by the Social Security Act?

STATEMENT OF THE CASE

Respondents are Illinois recipients of Aid To Families With Dependent Children (AFDC) and the Chicago and Illinois Welfare Rights Organizations (hereinafter referred to as plaintiffs). In September, 1973, plaintiffs filed a class action for declaratory judgment and injunctive relief against the Illinois Department of Public Aid and its director. (Defendants herein) (A. 13) Defendants joined the United States Department of Health Education and Welfare (HEW) as a party defendant.

Plaintiffs' action, brought pursuant to 42 U.S.C. § 1983, challenged the validity of the Illinois emergency assistance program, promulgated under § 406(e) of the Social Security Act [42 U.S.C. § 606(e)][1] The Illinois program, limited to AFDC-eligible persons, was designed to meet emergent need resulting from four possible crisis situations:

1. The AFDC family is homeless (without shelter) as a result of damage to the building rendering it uninhabitable (example: fire, condemnation).
2. A court-ordered eviction occurs for reasons other than the recipient's failure to pay rent.
3. The AFDC family is potentially homeless due to damage to a portion of the building.
4. The AFDC applicant, determined presumptively eligible for AFDC, is in emergent need of clothing and/or household furnishings and equipment. (Emergent food and rent can also be authorized by disbursing order at the time the applicant is determined presumptively eligible as provided in this paragraph. Any amount

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1. Section 406(e) provides:

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment —

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.
42 U.S.C. § 606(e)

thus authorized may not exceed the amount calculated as the applicant's first month's payment, and will be deducted from the applicant's first month's payment.)

(A. 25) Count I of plaintiffs' amended complaint alleged, *inter alia*, that the Illinois emergency assistance program violated the Social Security Act because: 1) it failed to provide aid to avoid destitution caused by other types of emergencies, and 2) it failed to include persons who were ineligible for AFDC, yet otherwise eligible for emergency assistance. (A. 20-21) Count II alleged that the Illinois program violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. (A. 24)

After a bench trial, on November 21, 1974, the district court ruled that the Illinois program was consistent with § 406(e) of the Social Security Act and the equal protection clause, but that the state defendants' processing of emergency assistance requests was too slow. (Sol. Gen'l. Petition, App. E.) On March 14, 1975, the district court ordered the state defendants to implement a revised processing procedure. (Sol. Gen'l Petition, App. D.)

Plaintiffs appealed the orders to the United States Court of Appeals for the Seventh Circuit, and on September 25, 1975, the court of appeals entered its first decision in this case. (A. 30) (*Mandley* I) The court reversed the November 21, 1974 order, ruling that the Illinois emergency assistance program violated the Social Security Act because it defined eligibility more narrowly than was allowed under § 406(e). The court noted that participation in the § 406(e) program was optional, and the state of Illinois need not continue to provide emergency assistance. (A. 43) The seventh circuit affirmed the March 14, 1975 order respecting the processing of applications, and the case was remanded to the district court.

On December 1, 1975, the state defendants filed a motion to dismiss the case on the ground that the lawsuit was moot. (A. 59) The motion and attached exhibits recited that Illinois had terminated its participation in the § 406(e) program, and it would no longer seek funds under either § 406(e) or § 403(a)(5).[2] HEW filed a motion to dismiss, based on the same ground, shortly thereafter. (A. 65) Both motions were denied by the district court on December 31, 1975. (A. 5)

On June 18, 1976, the state defendants again informed the court that they would not implement an emergency assistance program which was funded under § 406(e) or § 403(a)(5). In its place, the state defendants created a "special assistance" program as part of the Illinois AFDC program, which would be funded pursuant to § 403(a)(1) of the Act [42 U.S.C. § 603(a)(1)]. The new program, approved by HEW in April, 1976, was designed to meet the

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2. Section 403(a)(5) provides:

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to section 1320b of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958 —

* * *

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

42 U.S.C. § 603(a)(5)

special needs of AFDC-eligible families. It afforded virtually identical relief as was provided under the § 406(e) program, but its benefits were available to eligible individuals more often than with the § 406(e) program.

Plaintiffs maintained that the new program constituted an unlawful attempt to circumvent the eligibility requirements of § 406(e). The district court granted plaintiffs leave to amend their complaint to allege the illegality of the new program. However, plaintiffs chose to stand on their complaint, and on July 12, 1976, the court dismissed the case as moot. (A. 106)

Plaintiffs appealed that decision, and on November 23, 1976, the court of appeals rendered its second decision in this case. (A. 119) (*Mandley* II) The court reversed the district court's dismissal of the cause as moot, ruling that Illinois could not avoid the requirements of § 406(e) by creating a "special assistance" program as part of its AFDC plan and seeking federal funds through § 403(a)(1). (A. 131) The court reaffirmed its prior decision that § 406(e) delineated the mandatory eligibility requirements for the emergency assistance program. (A. 135) The court of appeals remanded the case to the district court with instructions to enter the proposed final judgment order submitted by plaintiffs. (A. 141)

On November 29, 1976, the proposed order (as slightly modified) was entered by the district court. In pertinent part, the state defendants were required to submit amended emergency assistance regulations which satisfied the requirements of § 406(e). (A. 148) Additionally, the order compelled the state defendants to provide emergency assistance to eligible individuals within twenty-four hours of the initial request for aid. (A. 151)

On February 22, 1977, the state defendants filed a Petition for Writ of Certiorari to review the court of appeals decision. This Honorable Court granted the petition on June 6, 1977.

SUMMARY OF ARGUMENT

I.

The court of appeals erred by reversing the decision of the district court entered on July 12, 1976 dismissing the case.

The district court, applying undisputed principles of federal decisional law, correctly ruled that the lawsuit had become moot and, therefore, no case or controversy was before the court.

Plaintiffs' amended complaint alleged that the Illinois emergency assistance program promulgated pursuant to § 406(e) of the Social Security Act [42 U.S.C. § 606(e)] violated the Act by failing to follow specified criteria. After plaintiffs' position was sustained by the court of appeals, the State of Illinois terminated the optional program. In its place, the state created a "special assistance" program as part of its basic AFDC plan established pursuant to § 406(b) of the Social Security Act [42 U.S.C. § 606(b)], which would be funded under § 403(a)(1) [42 U.S.C. § 603 (a)(1)]. Since the emergency assistance program challenged by plaintiffs had been abandoned, and since plaintiffs refused to amend their complaint to challenge the new program, a case or controversy no longer existed.

The court of appeals erroneously ruled that the "special assistance" program was an unlawful attempt to circumvent the eligibility requirements of § 406(e). The court failed to appreciate the state's option to provide for special needs under its basic AFDC program. A state has great latitude to determine the standard of need for AFDC purposes, and a state may include whatever items it wishes

in formulating its standard. The inclusion of special need items to meet crisis situations is perfectly permissible, and such action has been implicitly approved by federal decisional law.

The Department of Health Education and Welfare, entrusted with the enforcement of the Social Security Act, has issued regulations allowing the inclusion of special need items in a state's AFDC standard. This HEW interpretation long antedates Congressional enactment of the emergency assistance program.

Although the state defendants are providing virtually the same benefits under the "special assistance" program as were offered under the § 406(e) plan, there are differences between the two programs. Under the § 406(e) program, a state, at its option, may cover families not eligible for AFDC. However, under the "special assistance" program, a state may offer benefits only to AFDC-eligible families. Under the § 406(e) program, emergency assistance may be provided for only thirty days out of every twelve month period. No such time limitation exists respecting the "special assistance" program. Finally, the § 406(e) plan is funded under § 403(a)(5), while the "special assistance program is funded under § 403(a)(1).

The court of appeals incorrectly analyzed the operation of § 403(a)(1). Contrary to the court's holding, the funding of the "special assistance" program through § 403 (a)(1) will not limit the availability of funds for other AFDC programs. Thus, the court's analysis dos not support its conclusion that federal reimbursement for special or emergency needs must be exclusively drawn through § 403(a)(5).

Illinois' decision to implement only a special assistance program for AFDC-eligible families frustrates neither the

requirements of § 406(e) nor the will of Congress. First, the § 406(e) program is optional with the states. Second, Congress, in enacting the emergency assistance program, did not withdraw the states' ability to meet the special needs of AFDC-eligible families.

II.

The court of appeals erred by ruling that states wishing to participate in the § 406(e) emergency assistance program must provide relief from all types of destitution and for all needy families with children.

While § 406(e) is couched in broad language, that section does not impose mandatory eligibility requirements on participating states. Rather, § 406(e) merely establishes the outer limits of the emergency assistance program which a state, in its considered judgment, may constrict.

Defendants' posture in this case is consistent with the legislative history behind the emergency assistance program. That history reveals that Congress gave the states flexibility in the formulation of emergency assistance programs. No part of the legislative history indicates that mandatory eligibility requirements were intended by Congress.

Furthermore, the Department of Health, Education and Welfare recognizes that states may define the eligibility standards and the emergency needs which will be met. This stance was taken contemporaneously with Congressional enactment of the emergency assistance program and should be given great weight.

Defendants' position promotes the purpose behind the emergency assistance program. The court of decisions decision, however, requires a state to consider two unattractive alternatives. The decision may force the state to substantially reduce benefits to eligible families, thereby paying those families meaninglessly small amounts. On the other hand, a state may be forced to substantially increase its welfare budget. Thus, the court's decision may force many states to terminate participation in the emergency assistance program altogether. Given that situation, the legislative goal behind the § 406(e) program will certainly be frustrated. Defendants' position, which allows each state to provide a significant amount of assistance to members of a smaller eligible class than was suggested by the seventh circuit, represents a meaningful solution to some of the problems affecting the poor.

The court of appeals decision that § 406(e) imposes mandatory eligibility requirements rests on the notion that § 402(a)(10) requires participating states to provide emergency aid "to all eligible individuals". However, that section only pertains to the program for "aid to families with dependent children", and not to the emergency assistance program. The court's attempt to otherwise interpret that provision violates settled rules of statutory construction.

While the court of appeals defined § 406(e) as establishing eligibility requirements, the court was unable to specifically define those requirements. Its difficulty manifests the court's erroneous position regarding § 406(e).

III.

The order entered by the district court at the express direction of the court of appeals imposes burdens on the state of Illinois not intended by the Social Security Act.

The district court order in essence requires the state defendants to resurrect an emergency assistance program according to guidelines established on the face of § 406(e). However, participation in the § 406 emergency assistance

ARGUMENT

I.

THE COURT OF APPEALS ERRED BY REVERSING THE DECISION OF THE DISTRICT COURT ENTERED ON JULY 12, 1976 WHICH DISMISSED THE CASE AS MOOT.

A.

The District Court Properly Dismissed The Lawsuit On The Ground That It Was Moot And, Therefore, Did Not Present A Case Or Controversy.

Pursuant to Article III, § 2 of the United States Constitution, the exercise of federal judicial power depends upon the existence of a case of controversy. *Powell* v. *McCormack*, 395 U.S. 486, 496 n. 7, 23 L. Ed. 2d 491, 502 (1969); *Preiser* v. *Newkirk*, 422 U.S. 395, 401, 45 L. Ed. 2d 272, 277 (1975). The rule is firmly established that a moot case does not present a case of controversy. *Powell* v. *McCormack*, 395 U.S. 486, 496 n. 7, 23 L. Ed. 2d 491, 502 (1969). "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* at 497, 23 L. ed. 2d. 491, 502. Since an actual controversy must be present at all stages of the litigation, not merely at the time the complaint is filed, a federal court loses jurisdiction over a case which becomes moot. *Roe* v. *Wade*, 410 U.S. 113, 125, 35 L. Ed. 147, 161 (1973); *Allee* v. *Medrano*, 416 U.S. 802, 818 n. 12, 40 L. Ed. 2d 566, 582 (1974). Such a situation arose in the instant case.

Plaintiffs' amended complaint, filed December 20, 1973, alleged that the implementation of the Illinois emergency

program lies within the discretion of the state, and the state defendants should not be subject to contempt proceedings for the lawful exercise of Illinois' right to refrain from participating in the program.

The order requires the state defendants to provide emergency assistance within twenty four hours of an initial request. This stringent time requirement is nowhere contained in the Social Security Act and HEW regulations. The court's order ignores the reality that such speed is not always necessary or possible. More importantly, the order sacrifices adequate vertification in the name of speed in delivery. The timetable would lead to the improper expenditure of funds, thereby unnecessarily depleting the state's limited welfare budget.

assistance program violated § 406(e) of the Social Security Act and the Fourteenth Amendment to the United States Constitution. (A. 13) The district court found that the Illinois program conformed in most respects with the federal law, but the court of appeals reversed that decision. (A. 30)

Subsequent to the court of appeals opinion, the state of Illinois opted out of the 406(e) emergency assistance program, and both the state and federal defendants moved to dismiss the case as moot. (A. 59, 65) Of course, the mere voluntary cessation of allegedly illegal activity will not render the case moot, thus divesting the court of jurisdiction to hear a matter. *Preiser* v. *Newkirk*, 422 U.S. 395, 402, 45 L. Ed. 2d 272, 278 (1975); *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 633, 97 L. Ed. 1303, 1309 (1953). However, the case will be moot if the defendant can demonstrate that there is "no reasonable expectation that the wrong will be repeated." *Id.* at 633, 97 L. Ed. 1303, 1309.

Attached to the state defendants' motion to dismiss was the affidavit of Barbara Sticher, stating that the Department of Public Aid would immediately cease all activities and requests for reimbursement under its § 406(e) emergency assistance program. (A. 61) Also attached was a letter from former Department director James Trainor to the regional director of HEW, reciting that the Department had terminated its emergency assistance program. (A. 63) In addition, the state defendants' report to the district court on June 18, 1976, again indicated that they would not implement any emergency assistance program which employed federal funds pursuant to § 406(e). Thus, the state defendants convincingly demonstrated that there was no reasonable likelihood that the allegedly illegal conduct would be repeated.

Plaintiffs could have amended their complaint to allege that the Illinois "special assistance" program violated federal statutory or constitutional law. See, e.g., *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 635, 97 L. Ed. 1303, 1310 (1953) Indeed, plaintiffs were given every opportunity to do so by the district court. (A. 109, 111) However, plaintiffs elected to stand on their complaint which only challenged the state's previously terminated § 406(e) emergency assistance plan. (A. 117) Given plaintiffs' election, the district court properly dismissed the lawsuit for lack of a case or controversy.

B.

The State Of Illinois May Operate A "Special Assistance" Program As Part Of Its AFDC Program Funded Under 42 U.S.C. § 603(a)(1) Which Stands Separate And Distinct From The 42 U.S.C. § 606(e) Emergency Assistance Program.

In reversing the district court decision, the court of appeals stated:

> This case is not moot, for the state defendants are still operating an emergency assistance program with matching federal funds, although under the guise of a "special assistance" program.

(footnote omitted, A. 128), and further that:

> Stripped to the bone, our holding is founded on the premise that Section 403(a)(5) is the exclusive provision for federal funding of emergency needs under Part A of Subchapter IV.

(A. 131) Readily apparent is the court's failure to realize that Illinois could provide assistance to meet the special needs of AFDC—eligible families through the § 406(b)

AFDC program, as funded via § 403(a)(1) of the Act. It is respectfully submitted that the court's inability to appreciate this option available to the state defendants resulted in the court's erroneous decision.

The "special assistance" program was established as a component of the Illinois program for "aid to families with dependent children," as defined by § 406(b). [42 U.S.C. § 606(b)] "The AFDC program is based on a scheme of cooperative federalism." *King* v. *Smith*, 392 U.S. 309, 316, 20 L. Ed. 2d 1118, 1125 (1968) A participating state must provide aid to "all eligible individuals." 42 U.S.C. § 602(a)(10) Thus, it is well settled that a state may not deviate from mandatory eligibility standards established in the Social Security Act. *Townsend* v. *Swank*, 404 U.S. 282, 286, 30 L. Ed. 2d 448, 453 (1971).

However, the state does enjoy certain discretion in operating the program, for it may determine the level of payments made to eligible persons. *Rosado* v. *Wyman*, 397 U.S. 397, 408, 25 L. Ed. 2d 442, 453 (1970); *Dandridge* v. *Williams*, 397 U.S. 471, 478, 25 L. Ed. 2d 491, 498 (1970); *Jefferson* v. *Hackney*, 406 U.S. 535, 541, 32 L. Ed. 2d 285, 293 (1972). In order to compute the level of payments, a state must formulate its standard of need which is "the amount deemed necessary by the State to maintain a hypothetical family at a subsistence level." *Shea* v. *Vialpando*, 416 U.S. 251, 253, 40 L. Ed. 2d 120, 125 (1974) Section 402 of the Social Security Act, which establishes the minimum requirements for a state plan, does not include mandatory items for purposes of constructing a standard of need. "Thus, some States include in their 'standard of need' items that others do not take into account." *Rosado* v. *Wyman*, 397 U.S. 397, 408, 25 L. Ed. 2d 442, 453 (1970).

Section 402 does not prohibit a state from including items of special or emergency need in its standard. Regulations promulgated by HEW clearly allow the inclusion of special need items.[3] 42 C.F.R. § 233.20(a)(2)(v) (1976) provides:

> If the State agency includes special need items in its standard, (*a*) describe those that will be recognized, and the circumstances under which they will be included, and (*b*) provide that they will be considered in the need determination for all applicants and recipients requiring them.

This interpretation antedates by nearly two decades Congressional enactment of the § 406(e) emergency assistance program and supports Illinois' position that it may operate a "special assistance" program as part of its regular AFDC program. See, e.g., *Handbook of Public Assistance Administration*, Part IV, § 3131(2), (1949); *Handbook of Public Assistance Administration*, Part IV, § 3131 (3), (1966). It is settled beyond dispute that the long-standing interpretation of a statute by the agency entrusted with its execution is entitled to great deference. *Udall* v. *Tallman*, 380 U.S. 1, 16, 13 L. Ed. 2d 616, 625 (1965); *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 421, 37 L. Ed. 2d 688, 699 (1973).

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3. The Solicitor General's petition for a writ of certiorari notes that forty five states presently include special need items in their AFDC plans. (p. 10) Among the items included are emergency needs arising from catastrophes, natural disasters, and emergency child care. States consistently have been reimbursed pursuant to 42 U.S.C. § 603(a)(1) for expenditures made on behalf of families with dependent children for these items. (pp. 4-5)

Federal decisional law has implicitly approved the operation of special assistance programs such as was promulgated by the state of Illinois. The state of New York implemented an AFDC program which included not only recurring need items, e.g., food and clothing, but also included certain special need items. In 1969, New York eliminated those special need items from its program. In *Rosado* v. *Wyman*, 397 U.S. 397, 415-16, 25 L. Ed. 2d 442, 457 (1970), the Supreme Court relying on 42 U.S.C. § 602 (a)(23), held that New York improperly eliminated those special items from its standard of need.

Similarly, approval of the "special assistance" program was implicitly granted in *Bourgeois* v. *Stevens*, 532 F. 2d 799 (1st Cir. 1976). In that case, the Massachusetts AFDC plan had included non-recurring need items to help AFDC recipients during certain emergency situations. 532 F. 2d 799, 801. When those need items were eliminated, plaintiffs brought suit contending that the plan violated 42 U.S.C. § 602(a)(23). The court of appeals affirmed the district court decision allowing Massachusetts to eliminate its special need items under the AFDC program.

In short, the Social Security Act, as interpreted by HEW and the federal courts, permits Illinois to meet the special or emergent needs of AFDC-eligible persons under the state's basic § 406(b) AFDC program. In this light, the state defendants have not attempted to illegally circumvent the court's decision in *Mandley* I. On the contrary, the state defendants have lawfully taken an optional course of action available well in advance of Congressional enactment of the emergency assistance program and the decision in *Mandley* I.

While the "special assistance" program provides virtually the same benefits as was provided by the § 406(e) emergency assistance program, there are crucial differences between the two programs which were not perceived by the court of appeals. The § 406(e) emergency assistance plan permits a state to cover, at its option, persons not eligible for AFDC. However, the "special assistance" program, designed as a component of the AFDC program, covers only those persons eligible for AFDC. Moreover, under the § 406(e) program, aid may be granted for a "period not in excess of 30 days in any 12-month period." 42 U.S.C. § 606(e). However, no such limitation exists respecting the "special assistance" program. In addition, federal reimbursement under the § 406(e) program is granted at a fifty percent rate as provided in § 403(a)(5). Under the "special assistance" program, however, reimbursement is provided under the more complicated formula established at § 403(a)(1).[4]

The court's holding that §403 (a) (5) constitutes the "exclusive provision for federal funding of emergency needs" (A. 131) rests on an erroneous analysis of the §403 funding provisions. The seventh circuit reasoned that if AFDC special assistance funds could be drawn through § 403(a)(1), then federal funding to pay other AFDC benefits "presumably would be reciprocally limited" while § 406(e) funding would remain unspent. (A. 133) The

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4. States also participating in the Medicaid program may apply the Medicaid formula instead of the formula set forth in § 403(a)(1). See, 42 U.S.C. § 1318. The federal reimbursement rate under the Medicaid program "shall in no case be less than 50 per centum or more than 83 per centum." 42 U.S.C. § 1396d.

court concluded that any special assistance reimbursement must be channeled solely through § 403(a)(5) and, therefore, the § 406(e) emergency assistance program. (A. 133) The court's theory is based on the premise that the Social Security Act limits the total dollar amount which a state may obtain under its AFDC program. However a fair reading of 42 U.S.C. § 601 negates that premise:

> . . . there is authorized to be appropriated for each fiscal year a *sum sufficient* to carry out the purposes of this part.

(emphasis added) Thus, the funding of Illinois' special assistance program through § 403(a)(1) simply does not create a "limiting tension" on other AFDC funds provided under § 403(a)(1). (A. 133) Without a doubt, the court's analysis fails to support its conclusion in this case.

The seventh circuit also stated that Illinois would eviscerate the § 406(e) emergency assistance program and frustrate Congressional intent behind the program if Illinois could obtain federal reimbursement through § 403(a)(1) for its "special assistance" program. (A. 136) However, since relevant legislative history reveals that participation in the emergency assistance program is optional, [see e.g., S. Rep. 744, 90th Cong. 1st Sess., U.S. Code Cong. & Adm. News, v. 2, 2838 (1967)] Illinois' decision to opt out of the § 406(e) program does not frustrate Congressional will or eviscerate the program. Moreover, nowhere does the legislative history indicate that Congress, in creating the emergency assistance program, intended to withdraw the states' option to provide for the special needs of AFDC-eligible families which existed previous to the enactment of the § 406(e) program. Again, the court's conclusion in this regard is unsupportable.

Because the enactment of the "special assistance" program by the state defendants was entirely consistent with the Social Security Act, it is respectfully submitted that the court of appeals failed to appreciate the legal basis for the program, and consequently, defendants' motions to dismiss. Accordingly, the decision of the court of appeals should be reversed.

II.

THE COURT OF APPEALS ERRED BY RULING THAT STATES ELECTING TO MAINTAIN AN EMERGENCY ASSISTANCE PROGRAM UNDER 42 U.S.C. § 606(e) MUST PROVIDE RELIEF FROM ALL TYPES OF DESTITUTION AND FOR ALL NEEDY FAMILIES WITH CHILDREN.

In its November 23, 1976 ruling, the court of appeals reaffirmed its original decision that § 406(e) of the Social Security Act imposes eligibility standards which must be followed by participating states. (A. 135) In addition, the court instructed the district court to enter an order enjoining defendants from "using any other means of limiting eligibility for emergency assistance more narrowly than the provisions of § 406(e)." (A. 150) It is respectfully submitted that the court's interpretation of § 406(e) and, therefore, its decision in this regard is erroneous.

Section 406(e) of the Act provides:

> (1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one

or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary; but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

Even a cursory reading of § 406(e) reveals the great breadth of that provision, which embodies Congress' intention to create an emergency program which could reach beyond the bounds of the § 406(b) AFDC program. However, contrary to the seventh circuit's conclusion, § 406(e) does not require participating states to meet all emergency needs of all needy families with children in order to participate. Rather, § 406(e) merely defines the parameters of an emergency assistance program — boundaries which can be limited in the considered judgment of a state.

A state has great latitude in defining the standard of need within its boundaries. *Dandridge* v. *Williams*, 397 U.S. 471, 478, 25 L. Ed. 2d 491, 498 (1970); *Jefferson* v. *Hackney*, 406 U.S. 535, 541, 32 L. Ed. 2d 285, 293 (1972). It is free to determine which items will be included in the standard of need. *Rosado* v. *Wyman*, 397 U.S. 397, 408, 25 L. Ed. 2d 441, 453 (1970). Similarly, a state which participates in the § 406(e) emergency assistance program is free to determine the circumstances under which it will operate the program. As with the closely related yet separate AFDC program, not all impoverished persons may be covered, and not all exigent needs may be satisfied. However, such a circumstance does not invalidate a state's attempt to establish a limited emergency assistance program.

While legislative history is certainly less than abundant, it is consistent with defendants' position. The history shows that Congress intended to create a flexible program in order to encourage states to provide emergency assistance to the fullest extent possible. See, e.g., *Hearings on the Social Security Amendments of 1967*, H.R. 12080, 90th Cong. 1st Sess., 717, 1306; S. Rep. 744, 90th Cong. 1st Sess., U.S. Code Cong. & Adm. News, v. 2, 3002-03. Although the seventh circuit cited a number of passages of legislative history in support of its decision, none of that history indicates that Congress intended § 406(e) to impose mandatory guidelines on participating states.

Furthermore, defendants' position which would permit a state to structure the limits of its emergency assistance program has been consistently supported by H.E.W. 45 C.F.R. § 233.120 provides:

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) *Specify the eligibility conditions imposed for the receipt of emergency assistance.* These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) *Specify the emergency needs that will be met,* whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

(Emphasis added) The Secretary of HEW issued regulations shortly after the effective date of § 406(e) allowing states to specify the conditions of eligibility for emergency assistance. [33 Fed. Reg. 10229 (July 17, 1968)] The regulation was made permanent on January 10, 1969. (34 Fed. Reg. 393) It is clearly established that the consistent statutory interpretation issued by the agency charged with the enforcement of a statute is entitled to great weight. *Udall* v. *Talman*, 380 U.S. 1, 16, 13 L. Ed. 616, 625 (1965); *Department of Social Services* v. *Dublino*, 413 U.S. 405, 421, 37 L. Ed. 688, 699 (1973).

The propriety of an HEW regulation giving latitude to states in the operation of AFDC program was recently upheld by this Honorable Court in *Batterton* v. *Francis*, —— U.S. ——, —— L. Ed. 2d —— (1977) (45 L.W. 4768,

June 21, 1977). Pursuant to the AFDC-UF program, [42 U.S.C. § 607(a)], the Secretary of HEW was authorized to define "unemployment" for purposes of the program. The Secretary's definition gave states latitude to exclude from the meaning of "unemployment" those persons out of work due to a labor dispute or for reasons which would disqualify them for state unemployment compensation. A Maryland district court invalidated the regulation because it delegated the question of eligibility to the states. 45 L.W. 4768, 4769-70. On direct appeal, this Court reversed the lower court determination, stating:

> Certainly, the congressional purpose was to promote greater uniformity in the applicability of the AFDC-UF program. But the goal of greater uniformity can be met without imposing identical standards on each State.

45 L.W. 4768, 4772.

Pursuant to statutory authority [42 U.S.C. § 1302), the Secretary has promulgated regulations which allow a participating state to determine under which circumstances emergent needs will be met. While HEW's regulation may result in a lack of uniformity between states, it is nonetheless consistent with the Social Security Act and should be given effect here.

Additionally, the *Batterton* decision raised a significant consideration which is equally applicable here:

> Our conclusion is reinforced by our understanding of the AFDC-UF program as involving the concept of cooperative federalism. The States are free not to participate in the program, and, as we have noted, only about half of them in fact do so. The congressional purpose is not served at all in those States where AFDC-UF is totally unavailable. Accordingly, we

> should not lightly infer a congressional intention to preclude the Secretary from recognizing legitimate local policies in determining eligibility. See *New York Dept. of Social Services* v. *Dublino*, 413 U.S. 405, 413-414, 421-422 (1973). [45 L.W. 4768, 4772.]

Illinois taxpayers cannot shoulder the burden of unlimited aid for the emergency assistance program. Of course, the state could provide aid to all needy children for a whole range of emergent needs. With the limited resources available, however, funds necessarily would be spread so thin that no one would be helped, with consequent loss to all members of the public. Instead, Illinois chose to provide funds only for certain emergency situations, thereby giving those eligible persons substantially more assistance than would be possible under a broader program. By doing so, the state exercised a legitimate legislative interest which the seventh circuit should have respected. As was stated in *Department of Social Services* v. *Dublino*, 413 U.S. 405, 413, 37 L. Ed. 2d 688, 694-95, dealing with a New York social welfare law:

> To the extent that the Work Rules embody New York's attempt to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments, this Court should not lightly interfere. The problems confronting our society in these areas are severe, and state governments, in cooperation with the Federal Government, must be allowed considerable latitude in attempting their resolution.

The court of appeals decision places the states in a real dilemma. Under the opinion, a state participating in the emergency assistance program must substantially increase the size of its welfare budget or else drastically reduce the

level of benefits to provide aid for a greatly increased class of "eligible" individuals. The choice is, in essence, no choice at all, and the court's decision may force many states to opt out of the emergency assistance program altogether. The Solicitor General has previously indicated that besides Illinois, Wisconsin has abandoned its emergency assistance program due to decisions of the Seventh Circuit and other courts, and Arkansas has suspended its program because of "severe financial difficulties."[5] In light of these ominous facts, this Court's statement in *Batterton* takes on even greater significance:

> The States are free not to participate in the program, and, as we have noted, only about half of them in fact do so. The congressional purpose is not served at all in those States where AFDC–UF is totally unavailable.

45 LW 4768, 4772. The seventh circuit's decision, in determining that § 406(e) imposes mandatory eligibility standards, clearly frustrates the Congressional purpose behind the emergency assistance program.

The court of appeals based its conclusion in large measure on § 402(a)(10) of the Act, which provides that a state plan must:

> . . . provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity so to do, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals. [42 U.S.C. § 602(a)(10)]

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5. Petition for a writ of certiorari, p. 17.

However, the very terms of that section negate its applicability here, for § 402(a)(10) deals exclusively with the program for "aid to families with dependent children." Nonetheless, the court inferred that since the emergency assistance program is closely related to the § 406(b) AFDC program, § 402(a)(10) extends to the emergency assistance program.[6] The court's reasoning is particularly puzzling in light of the rest of its opinion. In another portion, the court found that when Congress gave the states the option to cover migratory workers, such intent was specifically stated. However, notwithstanding Congressional silence, the court merely inferred that Congress intended § 402(a)(10) to apply to the emergency assistance program. The court's reasoning constitutes a clear departure from the settled rules governing the interpretation of the Social Security Act. *Burns* v. *Alcala*, 420 U.S. 575, 580, 43 L. Ed. 2d 469, 475 (1975).

The court's error is further manifested in its inability to fashion a workable opinion. The court stated in *Mandley* I:

> . . . This Court need not not establish the exact meaning of the eligibility provisions of Section 606(e) because this case requires only that the validity of the specific Illinois program be determined. The problem of setting workable definitions for the somewhat amorphous eligibility criteria in Section 606(e) may be addressed by HEW rulemaking.

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6. While agreeing with the result reached by the court of appeals, the third circuit found that § 402(a)(10) is inapplicable to the emergency assistance program. *Williams* v. *Wohlgemuth*, 540 F. 2d 163, 168-69 (3d Cir. 1976).

(A. 43) Notwithstanding the court's resort to other sections of the Social Security Act, legislative history and decisional law, it was clearly unable to set forth the meaning of the § 406(e) "eligibility requirements." The court's obvious difficulties in this regard gives even greater weight to defendants' position that § 406(e) does not establish eligibility requirements at all. The seventh circuit's contrary conclusion, therefore, should be reversed.

III.

THE ORDER ENTERED BY THE DISTRICT COURT AT THE EXPRESS DIRECTION OF THE COURT OF APPEALS IMPOSES BURDENS ON THE STATE OF ILLINOIS NOT INTENDED BY THE SOCIAL SECURITY ACT.

As part of its decision, the court of appeals, *sua sponte*, considered the scope of relief to be granted plaintiffs. The court ordered the district court to enter plaintiffs' previously proposed final order,[7] which places burdens on Illinois that are clearly not intended by the Social Security Act.

The district court order requires the state defendants to promulgate amendments which set forth the availability of emergency assistance according to the terms of § 406(e). (A. 147-48) Essentially, the order compels Illinois to resurrect and reformulate its previously abandoned emergency assistance program. In no uncertain terms, the legislative history demonstrates that states need not participate in the emergency assistance program:

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7. The order was slightly modified by the seventh circuit (A. 141).

> . . . a new program *optional with the States* would authorize dollar-for-dollar Federal matching to provide temporary assistance to meet the great variety of situations faced by needy children in families with emergencies.

(Emphasis added) S. Rep. No. 744, 90th Cong. 1st Sess., U.S. Code Cong. and Adm. News v. 2, 2838. The court's order subjects state officials to contempt proceedings merely because Illinois refused to participate in an optional program.[8] As appropriately stated in *Rizzo* v. *Goode*, 423 U.S. 212, 378-79, 46 L. Ed. 2d 561, 574 (1976) the judiciary should avoid disruption of a state's " 'latitude in the dispatch of its own internal affairs'."

Furthermore, should Illinois elect to participate in the § 406(e) program, it will be saddled with an unduly restrictive burden which could severely curtail its ability to properly administer the program. Under the court's order, defendants must provide assistance within twenty-four hours of the initial request. (A. 151.) However, such speed is not always possible or required, even in emergency situations. For instance, if utilities will be terminated in one week if past due bills are not paid, it is unnecessary to provide emergency assistance within twenty-four hours. Furthermore, the court-imposed deadline makes adequate verification of emergency assistance requests difficult if not impossible in many instances.

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8. The order is specially disturbing given the pains taken by the court of appeals to assure Illinois that its participation in the emergency assistance program is not required. (A. 139).

It should be noted that the time period may be extended:

> (a) for the time attributable to delay caused by an applicant's failure to provide essential information within his or her understanding and immediate control, or
>
> (b) by waiver signed by the applicant for emergency aid.

(A. 151). However, the first exception is limited to situations where delay is caused by the applicant. Not covered are situations in which essential information, while not within the immediate possession or control of the applicant, is difficult to ascertain and verify. The second exception provides little assistance to defendants for applicants will rarely, if ever, sign such a waiver, especially in light of the court's broad grant of relief.

The time requirement imposed on defendants was based on 45 C.F.R. § 233.120(a)(5), which provides that emergency assistance shall be provided "forthwith". Significantly, a specific time limitation was not set out because HEW recognized that while speed is important, the system must be flexible enough to meet the state's need for adequate verification. Similarly, in *Adens* v. *Sailor*, 312 F. Supp. 923 (N.D. Pa. 1970), the court refused to impose a emergency assistance program.

The state defendants certainly recognize that an emergency assistance program should operate at an accelerated pace. However, enforcement of the rigid timetable imposed by the court would force the state to provide aid to meet inadequately verified needs, thereby further draining Illinois' limited welfare budget.

CONCLUSION

For the foregoing reasons, Arthur F. Quern, Director of the Illinois Department of Public Aid, et al., state petitioners, respectfully urge this Honorable Court to reverse the order entered by the court of appeals on November 23, 1976, affirm the order entered by the district court dismissing the cause as moot.

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U.S. Const., Art. III, § 2 provides in pertinent part:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const., Amend. XIV, § 1:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 601:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and pro-

tection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87–543, Title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90–248, Title II, § 241(b)(1), 81 Stat. 916.

42 U.S.C. § 602 provides in pertinent part:

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary.

(a) A State plan for aid and services to needy families with children must:

• • •

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

42 U.S.C. § 603 provides in pertinent part:

§ 603. Payment to States; computation of amounts; Federal share of assistance payments; social and supportive services; appropriation; family planning services and supplies; reduction of amounts.

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to section 1320b

of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958 —

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 606(b)(2) of this title are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total of recipients of aid to families with

dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month; and

• • •

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

42 U.S.C. § 606 provides in pertinent part:

§ 606. Definitions

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1)

money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other invidual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

• • •

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type

of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

Aug. 14, 1935, c. 531, Title IV, § 406, 49 Stat. 629; Aug. 10, 1939, c. 666, Title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 323(a), 64 Stat. 551; Aug. 1, 1956, c. 836, Title III, §§ 321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87-543, Title I, §§ 104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88-641, § 2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89-97, Title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916.

42 U.S.C. § 1302:

§ 1302. Rules and regulations

The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

Aug. 14, 1935, c. 531, Title XI, § 1102, 49 Stat. 647; 1946 Reorg. Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. II, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; 1950

Reorg. Plan No. 19, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271; Aug. 28, 1950, c. 809, Title IV, § 403(c), 64 Stat. 559; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

42 U.S.C. § 1318:

§ 1318. Alternative Federal payment with respect to public assistance expenditures.

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a), 603(a), 1203(a), 1353(a), and 1383(a) of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections.

As amended Apr. 21, 1976, Pub. L. 94-273, § 2(23), 90 Stat. 376.

42 U.S.C. § 1396d provides in pertinent part:

Federal medical assistance percentage; State percentage; Indian health care percentage

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1301(a)(8) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of Title 25).

45 C.F.R. § 233.20(a)(2)(v):

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

• • •

(2) Standards of assistance.

• • •

(v) If the State agency includes special need items in its standard, (a) describe those that will be recognized, and the circumstances under which they will be included, and (b) provide that they will be considered in the need determination for all applicants and recipients requiring them.

45 C.F.R. § 233.120(a):

§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

F.R. Doc. 68-8497 (33 Fed. Reg. 10229) provides in pertinent part:

[Interim Policy Statement No. 3]

EMERGENCY ASSISTANCE PROGRAM–AFDC

Notice of Interim Policies and Requirements

• • •

Subject. Emergency Assistance to Needy Families With Children.

Purpose. To implement sections 403(a)(5) and 406(e) of the Social Security Act.

Regulations A. *Requirements for state plans.* A State plan nnder title IV, part A, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See B(1) below for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.

F.R. Doc. 69-334 (34 Fed. Reg. 393) provides in pertinent part:

PART 233 — COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS.

Emergency Assistance To Needy Families With Children

Interim Policy Statement No. 3 setting forth the regulations for the program administered under Title IV – Part A of the Social Security Act, with respect to emeregncy assistance to needy families with children, was published in the Federal Register of July 17, 1968 (33 F.R. 10229). No objections having been received from any person, such regulations are hereby

codified by adding a new § 233.120 to Part 233 of Chapter II of Title 45 of the Code of Federal Regulations as set forth below.

§ 233.120 Emergency assistance to needy families with children.

(a) *Requirements for State plans.* A State plan under Title IV, Part A, of the Social Security Act, providing for emergency assistance to needy families with children must:

(1) Specify the eligibility conditions imposed for the receipt of emergency assistance. These conditions may be more liberal than those applicable to other parts of the plan. (See paragraph (b)(1) of this section for scope of Federal financial participation.)

(2) Specify if migrant workers with families will be included and, if emergency assistance will not be available to them Statewide, the part or parts of the State in which it will be provided.

(3) Specify the emergency needs that will be met, whether mass feeding or clothing distribution are included, and the methods of providing payments, medical care, and other remedial care.

(4) Specify which of the following services will be provided: Information, referral, counseling, securing family shelter, child care, legal services, and any other services that meet needs attributable to the emergency or unusual crisis situations.

(5) Provide that emergency assistance will be given forthwith.